

This draft includes language for the revision of Section 17.12.090. Housekeeping amendments to additional sections of the Zoning Code and Subdivision Regulations may be necessary for consistency of references.

DRAFT ALTERNATIVE FOR PUBLIC COMMENT

Amend Chapter 17.12 of the Metropolitan Code by deleting section 17.12.090 Cluster Lot Option in its entirety and replacing it with the following:

17.12.090 - Conservation Development

- A. Purpose and Intent. Conservation development is a set of standards that shall be utilized in the design of subdivisions as provided in this section. The purpose of these standards is to:
 - 1. Preserve unique or sensitive natural resources such as steep slopes; hillsides; streams, wetlands, floodways, and floodplains; problem soils; archaeological resources; and native forests or unique vegetation.
 - 2. Encourage the creation of lots on less environmentally sensitive areas of the site.
 - 3. Provide flexibility in design of subdivisions within existing zoning districts to promote environmental resource protection.
- B. Applicability. Subdivisions proposed in the R/R-A and RS/RS-A zoning districts that meet both of the following standards shall utilize the provisions of this section.
 - 1. Minimum Site Area. The minimum site area of no less than ten (10) times the minimum lot area for the base zoning district as established by Table 17.12.020A. For example, in the R10 district the minimum area for the subdivision would be one hundred thousand square feet. (Ten thousand square feet minimum lot size times ten).
 - 2. Minimum Natural Area. A minimum of ten percent of the site contains any, or a combination of, the following:
 - a. Areas shown on FEMA maps as part of the 100 year floodplain or identified in local studies as confirmed by Metro Stormwater;
 - b. All perennial and intermittent streams, floodways, and associated buffers, as determined by Metro Stormwater or the State;
 - c. Areas of natural slopes of 20% or greater of at least 10,000 square foot contiguous area;
 - d. Areas containing problem soils as established by Section 17.28.050; Wetlands, as determined by Metro Stormwater;
 - e. Known habitat for federally or state listed or proposed rare, threatened, or endangered species;
 - f. Areas containing a protected Cedar Glade plant species as established by Section 17.28.060;
 - g. Archaeological or historic sites, cemeteries, and burial grounds; or
 - h. Protected, heritage and historic and specimen trees, as defined by Section 17.40.450 of the Metro Zoning Code.
- C. Maximum Lot Yield. The determination of the maximum lot yield shall be based on assigning 20% of the gross acreage of the site to open space and infrastructure. The

remaining 80% of the gross acreage shall be divided by the minimum lot size of the base zoning district to determine the maximum yield. Yield shall not be based on the minimum lot size as described in Section D Lot Size Flexibility.

D. Conservation and Design Flexibility. In order to accomplish the purposes of this section, flexibility in lot sizes may be proposed in exchange for protection of the natural areas present on the site according to the following standards:

1. Conservation Areas

- a. Subdivisions subject to the Rural Character Subdivision Regulations shall follow the procedures of those regulations for identification and protection of Primary Conservation Lands in common open space.
- b. All other subdivisions shall set aside as common open space those portions of the site containing natural areas for purposes of conserving those resources according to the following:
 - i. If less than or equal to 20 percent of the site contains these natural areas, then the entire area shall be set aside in common open space.
 - ii. If more than 20 percent of the site contains natural areas, then a minimum of 20 percent of the site shall be set aside as open space.

The applicant is encouraged, but not required, as part of this chapter, to set aside areas of common open space in excess of 20 percent in exchange for additional design flexibility.

2. Common open space may be provided for other purposes besides protection of natural areas, but such open space shall not contribute to the flexibility of lot sizes afforded by this section.
3. Lot sizes for single-family lots may be reduced in size from the minimum required by the base zoning district by equivalent percentage of the site that is in the natural area protected in common open space or in primary conservation land, if applicable. For example, on a site zoned RS15 with ten percent of the site set aside as natural area, the lots may be reduced in size by ten percent, or to a minimum of 13,500 square feet in area. On a site zoned RS15 with 35 percent set aside as open space protecting natural area, the lots may be reduced in size by 35%, or to a minimum of 9,750 square feet.
4. In no case shall the minimum lot size be reduced below 3,750 square feet.
5. Lots proposed for duplexes must meet the minimum lot size of the base zoning district (no reduction in area permitted) and shall comply with the standards of 17.16.030.D of this title.
6. Development in hillside and floodplain areas shall follow those standards as set out in Chapter 17.28. If the natural area preservation required in those sections is greater than the area required here, then that chapter shall prevail. In no case shall the required natural area preservation be less than that required in this section.
7. Trees removed pursuant to this section shall follow the standards of Chapter 17.28.65. If the natural area preservation required in that section is greater than the area required here, then the requirements of that section shall prevail.

In no case shall the required natural area preservation be less than that required in this section.

8. The standards for the review of critical lots as provided in the adopted Subdivision Regulations shall apply.
 9. The bulk standards and landscaping requirements of a comparable zoning district which most closely resembles the alternative lot sizes proposed for any given phase of development shall be employed for that phase of the subdivision.
 10. A standard C landscape buffer yard as per 17.24 Article IV Landscape Buffer Yard Requirements shall be required along the perimeter of the development when perimeter lots are reduced in size from the minimum lot size required by the base zoning district. If all perimeter lots meet the minimum size of the base zoning, no landscape buffer yard is required.
- E. Natural Open Space. Open space provided for the purposes of protecting natural areas and in exchange for flexibility of design, as described above, shall be called natural open space and subject to the standards below. These standards are not applicable to common areas or open spaces that may be provided for other purposes.
1. All natural open space provided in accordance with this section shall be platted with the first phase of development that includes any lots utilizing alternative lot sizes as provided for above and shall be identified on the plat as protected natural open space.
 2. Clearing, grading or disturbance of natural open space shall be prohibited, except for essential infrastructure. Roadways and other essential utilities necessary to serve the development may be permitted to cross a natural open space provided that this development minimizes impacts to this area. Preliminary grading and construction plans that demonstrate the limits of disturbance, feasibility of construction and overall impacts to the area at a level of detail beyond that normally required at the concept plan (preliminary plat) phase shall be required prior to approval of a plan incorporating such infrastructure. The portion of the natural open space that must be disturbed to accommodate essential infrastructure shall not contribute toward the required minimum natural open space or flexibility of lot size afforded by the previous section.
 3. Protected natural open space shall be located and identified in the field prior to the issuance of a tree removal or grading permit to ensure there is no disturbance of these areas during the construction process.
 4. Configuration and Access. To the maximum extent practicable given the configuration of natural areas, the open space shall be in a contiguous tract. Consideration should be given to the preservation of natural area that adjoins neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected open space in an adjacent development. The open space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with pedestrian access to the open space via an access easement designated on the plat.

5. Permitted Uses of Natural Open Space. The following uses may be located or installed within natural open space without affecting the contribution of those areas to flexibility of lot size afforded by the previous section:
 - a. Conservation of natural resources;
 - b. Paved greenway trails or trailhead facilities identified in the Metropolitan Parks and Greenways Master Plan and located within publicly accessible greenway conservation easements to the benefit of the Metropolitan Greenways Commission or Metro Parks;
 - c. Walking or bicycle trails provided they are constructed of porous paving materials;
 - d. Passive recreation areas such as picnic shelters, gazebos, or shared docks;
 - e. Required stormwater mitigation measures such as reforestation that do not require grading;
 - f. Other conservation-oriented uses compatible with the purposes of this section.
6. Prohibited Uses of Natural Open Space.
 - a. Clearing, grading, disturbance, or tree removal except as specifically authorized in the permitted uses;
 - b. Roads, parking lots, impervious surfaces, and infrastructure;
 - c. Active recreational or play facilities including but not limited to tennis courts, basketball courts, swimming pools, playgrounds, baseball/softball diamonds or volleyball courts or other facilities that incorporate impervious surface; and
 - d. Impoundments, such as retention and detention basins, and other conventional stormwater facilities.
7. Ownership and Management.
 - a. Natural Open space within a conservation development shall be owned and maintained by an incorporated association for the mutual benefit of residents or property owners within the development and shall be adequately described on a recorded plat of subdivision approved by the planning commission. All property owners within a conservation subdivision shall be a member of the association which shall be responsible for the assessment of dues to cover the recurring costs of maintaining all natural open space areas. Articles of incorporation and bylaws shall be submitted and approved according to the subdivision regulations.
 - b. In limited circumstances where the natural open space is identified on the Greenways Master Plan or within the Parks Master Plan, the developer may offer the open space for dedication to Metro Parks subject to approval and acceptance by Metro Parks Board and Metro Council as appropriate.
 - c. Natural Open Space Management Plan. With the concept plan applicants shall submit a plan for the management of the open space and common facilities which allocates responsibility and guidelines for maintenance and operation of the open space and any facilities located

within the open space areas. If the open space is restricted via a conservation easement in the favor of a bona fide land trust or other permanently established organization legally able to accept such easements, a stewardship plan or other management plan associated with the conservation easement may be provided in lieu of the open space management plan.

d. Failure to maintain. When the failure of an association or other responsible party to properly maintain a natural open space results in a public nuisance, the zoning administrator is empowered to initiate appropriate measures to eliminate the nuisance. If public funds are utilized to remove a nuisance and/or maintain common open space, those costs shall be assessed proportionally against all property owners within the development in the form of a tax lien. This provision shall not apply to any natural open space that has been dedicated to and accepted by the metropolitan government.

F. Application Requirements.

1. The subdivision concept plan (preliminary plat) shall clearly indicate that a conservation development is proposed and shall be prepared in accordance with the procedures and requirements of the Metro Subdivision Regulations.
2. Concurrent with the submittal of the concept plan, the applicant shall prepare and submit a site analysis map that identifies the natural areas. Documentation of, or determinations regarding the areas from appropriate Metro, State or Federal agencies or official maps or resources, if applicable, shall also be provided.
3. Preliminary grading and construction plans that demonstrate the limits of disturbance, feasibility of construction and overall impacts to a natural area at a level of detail beyond that normally required at the concept plan (preliminary plat) phase shall be required prior to approval of a conservation plan.